

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2000-972

January 30, 2001

**BIDDEFORD INTERNET CORPORATION**

Petition for Finding of Public  
Convenience and Necessity to  
Provide as both Facilities-Based and  
Resold Local Exchange Service and  
Facilities-Based and Resold  
Interexchange Service

ORDER GRANTING AUTHORITY  
TO PROVIDE BOTH FACILITIES-BASED  
AND RESOLD LOCAL EXCHANGE  
SERVICE AND FACILITIES-BASED AND  
RESOLD INTEREXCHANGE SERVICE

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WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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In this Order, the Commission grants Biddeford Internet Corporation (BIC or Company) the authority to provide: (1) dedicated only, facilities-based competitive local exchange service throughout the State of Maine; (2) resold competitive local exchange service throughout Maine; and (3) resold and facilities-based interexchange service throughout Maine. We also exempt BIC from the requirements of Chapter 210, *Uniform System of Accounts*, and of 35-A M.R.S.A. §§ 707 and 708, subject to the conditions described below.

**I. APPROVAL OF APPLICATION TO SERVE**

On December 4, 2000, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, BIC filed a petition with the Commission requesting authority to provide facilities-based and resold local exchange telephone service in Maine as well as resold and facilities-based interexchange service.

Before we grant approval under section 2102 for another public utility to provide service, 35-A M.R.S.A. § 2105 requires us to find that the public convenience and necessity require another utility to provide service in a location where utility is already authorized to provide, or is providing, the same or similar service.

47 U.S.C. § 253(a), enacted by the Telecommunications Act of 1996, states:

(a) In General. No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunication service.

47 U.S.C. § 253(b) states, however:

(b) State Regulatory Authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

We find that granting BIC the authority to provide local exchange and interexchange services in Maine will not impede the preservation or advancement of the public interest goals or policies stated in section 253(b).

BIC's application provides reasonable information indicating that its financial and management capabilities are adequate to provide local services in Maine.

## **II. SERVICE TERRITORY**

### **A. Facilities-Based Local Service**

BIC initially requested authority to provide facilities-based local exchange service throughout the state. It later amended its request to provide dedicated only, facilities-based local exchange service. Facilities-based service includes service provided through the use of unbundled network elements obtained from incumbent local exchange carriers. Dedicated-only facilities-based service does not require the use of numbering resources.

If BIC wishes to expand its facilities-based local exchange authority to provide non-dedicated service, it shall seek such approval pursuant to 35-A M.R.S.A. § 2102, requesting the Commission to amend this Order. Any such request must specify the exchanges where it proposes to offer service and include information establishing a readiness to provide facilities-based local exchange service within six months in the specifically identified areas.

### **B. Resold Local Service**

BIC has also requested authority to provided resold local exchange service throughout the state. BIC states that it will offer service as a reseller of local exchange service provided by other authorized local exchange carriers (LECs). We define local resale as the offering of local exchange service purchased from another competitive local exchange carrier (CLEC) pursuant to 47 U.S.C. § 251(b)(1) or from an incumbent local exchange carrier (ILEC) at a wholesale discount pursuant to 47 U.S.C. §

251(c)(4). The purchase of unbundled network elements from an ILEC and their use in providing local exchange service is facilities-based service and is not resale.

### **C. Interexchange Service**

BIC has requested authority to provide facilities-based and resold interexchange service throughout the state. We grant that authority.

## **III. NEED TO FILE TERMS AND CONDITIONS AND RATE SCHEDULES**

In order to provide actual service, a utility not only must have authority to provide service but must have on file with the Commission a schedule of rates, terms and conditions for the services it will provide. BIC filed terms and conditions with its application but did not include any rates. 35-A M.R.S.A. §304 requires that a utility must file rate schedules and terms and conditions prior to providing a service. The terms and conditions shall specify the areas in which BIC will actually provide originating and terminating local exchange service, and may do so by reference to incumbent local exchange carrier (ILEC) exchanges rather than by municipalities. BIC must re-file its terms and conditions for approval before providing service.

## **IV. INTERCONNECTION AGREEMENT(S)**

In order to provide local exchange service, a competitive local exchange carrier must, as a practical matter, obtain an interconnection agreement with the ILEC(s) providing service in any area where it intends to provide service. In the absence of such an agreement, it will not be possible for BIC's customers to call customers of the ILEC(s), and vice versa. Interconnection agreements are governed by 47 U.S.C. § 252, and must be approved by this Commission.

If a CLEC makes a bona fide request for an interconnection agreement with an ILEC that is a "rural telephone company" as defined in 47 U.S.C. § 153(37), the "rural exemption" of 47 U.S.C. § 251(f) will apply. All of Maine's independent incumbent local exchange carriers are "rural telephone companies." A rural telephone company is not required to negotiate an interconnection agreement or provide interconnection until after the Commission, pursuant to 47 U.S.C. § 251(f)(1)(B), finds that the requirement "is not unduly economically burdensome, is technically feasible, and is consistent with the universal service provisions of section 254 . . . ." Thus, while BIC will be certificated for the entire state, it may not offer service in the areas served by the independent telephone companies until the Commission lifts the rural exemption.

If BIC executes an interconnect agreement(s) with an ILEC(s), it shall obtain approval of that agreement by this Commission.

## **V. PAYMENT OF ACCESS CHARGES**

Our approval of BIC's application to provide interexchange service in Maine is conditioned on the payment of access charges to local exchange carriers (LECs) who have on file with the Commission approved access charge rate schedules.

The Commission has granted authority to BIC to provide interexchange service both as a facilities-based carrier and as a switchless reseller.<sup>1</sup> If BIC provides facilities-based interexchange service, it must pay access charges directly to local exchange carriers. If BIC provides switchless resale service, it does not pay access charges to local exchange carriers. Instead, access charges are paid by an underlying facilities-based interexchange carrier. As a condition of granting authority to a switchless reseller to provide intrastate service in Maine, its underlying facilities-based carrier must also have authority to provide intrastate service in Maine. BIC has stated that Verizon will be the underlying carrier from which it purchases the interexchange services that it resells. Verizon is authorized by the Commission to provide intrastate interexchange service and does pay access charges for the intrastate interexchange services it sells to switchless resellers providing interexchange service in Maine. If BIC begins to use another authorized underlying carrier, it shall notify the Commission as required by the ordering paragraphs. If BIC begins to provide facilities-based interexchange service, it shall notify the Commission and all LECs from which it obtains access, as required by the ordering paragraphs.

## **VI. WAIVERS; REPORTING REQUIREMENTS**

As a condition of providing local exchange service, BIC must comply with the terms of any applicable Commission orders or rules that may govern local interconnection and compensation for interconnection. BIC shall also comply with any applicable Commission Rules or orders that govern universal service, public safety and welfare, service quality and consumer rights.

The Commission grants BIC a waiver from the requirements of Chapter 210 of the Commission's Rules, which governs telephone utility accounting, and from 35-A M.R.S.A. §§ 707 and 708, which govern reorganizations and affiliated interests. Because BIC's rates and operations are likely to be subject to market forces, we do not see any present need to subject the Company to those requirements. However, BIC must report its annual intrastate gross operating revenues and its annual intrastate minutes for use for the purpose of determining its regulatory assessment and such

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<sup>1</sup>We define switchless resellers as entities which do not own, lease, or control any switching facilities, or private lines, that it will use to provide telecommunication services in Maine. A reseller who owns a switch in another state, and plans to use that switch to switch or carry Maine traffic, is a switched reseller. A reseller who does not own facilities in Maine or any other state, or who owns facilities in another state but does not plan to use that switch to carry Maine traffic, is a switchless reseller.

other information requested by the Commission.<sup>2</sup> If BIC resells service to other switched or switchless telephone service providers, the Company must maintain its records so that it may separately identify those sales.

In addition, BIC shall inform the Commission of any changes to its corporate structure and ownership and of any changes in the name under which it does business, as set forth in Ordering Paragraph No. 3. If necessary, it shall also refile its rate schedules and terms and conditions to reflect its new identity

## **VII. OTHER REQUIREMENTS**

BIC shall comply with all applicable rules of the Commission and statutes of the State of Maine.

## **VIII. ORDERING PARAGRAPHS**

Accordingly, we

1. Grant, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, the request of BIC to provide facilities-based and resold competitive local exchange and interexchange telephone service throughout the State;

2. Exempt BIC from the requirements of Chapter 210 of the Commission's Rules, except that it must report the revenue and minutes of use information that is requested by the Commission, on or before April 1 of each year; and

3. Exempt BIC from the approval requirements of 35-A M.R.S.A. §§ 707 and 708, provided that BIC shall notify the Commission of any reorganization, as defined in 35-A M.R.S.A. § 707(1)(A), that results in a merger, sale or transfer of a controlling interest of BIC or of any entity that owns more than 50% of BIC. BIC shall also provide notice of any other changes in the name under which it does business (d/b/a), any change of the location of its business office, and any change of its contact person. BIC shall provide the Administrative Director of the Commission with notice of any of the changes described within 30 days following the change. If necessary, BIC shall amend its rate schedules and terms and conditions to reflect any change in identity.

4. Order that BIC, or an underlying facilities-based interexchange carrier authorized to provide interexchange service in Maine, shall pay interexchange access charges as required approved access rate schedules filed by local exchange carriers.

BIC shall notify the Commission of any change in its underlying carrier within 30 days following the change. Any underlying carrier used by BIC shall have the authority to provide intrastate interexchange service in Maine. BIC shall immediately inform the Commission and all local exchange carriers in the State of Maine from which BIC will be

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<sup>2</sup>The Commission mails the annual reporting forms to carriers in January of each year. The completed forms are due by April 1 of each year.

purchasing access services if there is any change in its operations that will result in its carrying, switching, or any processing of any of its own traffic, at which time BIC shall begin to pay access charges directly to those local exchange carriers that have approved access charge schedules on file with the Commission; and

5. Order that BIC shall comply with all applicable rules of the Commission, including the requirement of Chapter 280 § 10 that interexchange carriers provide notice to all affected customers of an increase to any rate that is greater than 20%.

Dated at Augusta, Maine this 30th day of January, 2001.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:

Welch  
Nugent  
Diamond

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.